Tenaga Nasional Bhd v Unggul Tangkas Sdn Bhd & Anor and other appeals

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01(f)-12–04 OF 2017(B)
ZULKEFLI PCA, RICHARD MALANJUM CJ (SABAH AND SARAWAK), ABU SAMAH NORDIN, ZAHARAH IBRAHIM AND PRASAD ABRAHAM FCJJ
19 DECEMBER 2017

Civil Procedure — Parties — Intervention — Application by appellant for leave to intervene in land reference proceedings — Whether filing of objection vide Form N pursuant to s 37 of the Land Acquisition Act 1960 was the only mode available for paymaster to be a party in land reference proceedings before High Court — Whether paymaster had a right to be made a party in land reference proceedings before High Court — Whether paymaster upon being given leave to intervene in land reference proceedings could be denied the right to participate and file valuer's report

Land Law — Acquisition of land — Land reference — Application by appellant for leave to intervene in land reference proceedings — Whether filing of objection vide Form N pursuant to s 37 of the Land Acquisition Act 1960 was the only mode available for paymaster to be a party in land reference proceedings before High Court — Whether paymaster had a right to be made a party in land reference proceedings before High Court — Whether paymaster upon being given leave to intervene in land reference proceedings could be denied the right to participate and file valuer's report — Land Acquisition Act 1960 ss 3(1)(a), 7, 37 & 45(2) — Rules of Court 2012 O 15 r 6(2)(b)

The respondent was the registered owner of two pieces of land ('the scheduled land') which were acquired for the appellant pursuant to s 3(1)(a) of the Land Acquisition Act 1960 ('the Act'). The respondent was awarded RM12,593,196 ('the award') as full compensation for its interest in the scheduled land, which was payable by the appellant. Aggrieved with the award, the respondent filed an objection in Form N to the land administrator and initiated two land reference proceedings before the High Court whereas the appellant filed applications under O 15 r 6 of the Rules of Court 2012 ('the ROC') for leave to intervene ('encl 7') in the land reference proceedings and to file the valuer's report and the relevant rebuttal reports. Enclosure 7 was allowed by the High Court and the appellant was added as intervener/second respondent in the land reference proceedings, nevertheless, the appellant was not allowed to file its valuation and rebuttal reports. Both parties had appealed against the decision of the High

Court and at the end of the appeals, the Court of Appeal held that the appellant should not be allowed to intervene and thus the issue of adducing the valuation and the rebuttal reports shall fail. In the present appeals, the questions of law to be determined were: (a) whether the filing of an objection vide Form N pursuant to s 37 of the Act was the only mode available for a paymaster to be a party in a land reference proceeding before the High Court ('question 1'); (b) whether the paymaster had a right to be made a party in a land reference proceeding before the High Court to safeguard its legal interest where the award of compensation made by the land administrator was being subject to challenge at the High Court ('question 2'); and (c) whether the paymaster upon being given leave to intervene in the land reference could be denied the right to participate and file a valuer's report if necessary under the Third Schedule to the Act ('question 3').

Held, dismissing the appeal with costs:

(1) The provisions of the Act made it clear that the lodging of Form N is essential if a party seeks to object to an award in land reference proceedings as it is aimed at an expeditious resolution of the objection to the award. The respondent had duly filed its objection in Form N under the Act in order to challenge the amount of the said compensation. However, based on the undisputed facts, although the appellant was present in the land acquisition hearing, it was not named as a party thereto. Neither was it present there as an intervener. Neither did it present any valuation report pertaining to the scheduled land that was the subject matter of the acquisition exercise (see paras 27–29).

(2) With regards to the appellant's application in encl 7 to intervene in the acquisition proceedings under O 15 r 6(2)(b) of the ROC, the court agreed with the respondent that s 45(2) of the Act did not lend assistance to the appellant's cause of action. Section 45(2) of the Act did not allow for an enlargement of the scope of the specific framework under the Act. Section 45(2) of the Act only provided for the complementary role of the ROC to the Act if it did not run contrary to the provisions of the Act. Order 15 r 6(2)(b) of the ROC in the context of the present case did not have any application (see paras 30–31).

(3) The appellant had no legal interest in the land reference proceedings. The appellant being the paymaster, it had at the highest only a pecuniary interest. The evidence in the present case showed that the appellant was not aggrieved by the award but was merely apprehensive that the outcome of the land reference proceedings in the High Court may adversely affect its pocket. It was for the land administrator to defend the award and the land administrator was fully entitled to lead such evidence as he considered necessary to do so (see paras 37–38).

(4) The High Court was correct to deny the appellant's right to tender any valuer's report in the land reference proceedings as every opportunity to tender the same was available to the appellant who was present during the enquiry. The court agreed with the views expressed by the Court of Appeal that the interest of the appellant was clearly taken care by the legal team representing the land administrator. Anything that needed to be submitted for the appellant must have been taken up by the legal team. The same process could be replicated during the land reference proceedings before the High Court judge. Land reference proceedings should not be protracted and delayed in the High Court by unnecessary interlocutory proceeding such as an application to intervene in encl 7 filed by the appellant (see para 39).

(5) For the present case, the court found that the scheduled land was acquired under s 3(1)(a) of the Act. This was evident from Form D issued by the state authority pursuant to s 7 of the Act. There was therefore no requirement for the acquiring party to comply with the provisions of ss 3(3), 3(4), 3(5), 3(6), 3A and 3F of the Act unlike if the scheduled land were to be acquired under s 3(1)(b) or (1)(c) of the Act. In this regard, the court agreed with the respondent's contention that the acquiring party and the paymaster was in fact the state authority, notwithstanding any internal arrangement between the state authority and the appellant concerning the payment of the award (see para 42).

(6) For the reasons stated above, the court answered question 1 in the affirmative. Other than the land administrator, only a person who had properly objected to an award under s 37 of the Act was entitled to be a party to the land reference proceedings with all the rights that entailed. The court answered question 2 in the negative. A paymaster was not so entitled as a matter of course. Question 3 ultimately hinged on the appellant succeeding in these appeals in respect of questions 1 and 2. Therefore, there was no necessity for the court to answer question 3. In any event, the question of valuer's report was a matter that ultimately concerned the second respondent (the land administrator) in defending the award (see para 43).

[Bahasa Malaysia summary

Responden adalah pemilik berdaftar dua bidang tanah ('tanah berjadual') yang diambil untuk perayu menurut s 3(1)(a) Akta Pengambilan Tanah 1960 ('Akta'). Responden diawardkan RM12,593,196 ('award') sebagai pampasan penuh atas kepentingannya ke atas tanah berjadual tersebut, yang mana pampasan tersebut perlu dibayar oleh perayu. Terkilan dengan award tersebut, responden mengemukakan bantahan melalui Borang N kepada pentadbir tanah dan memulakan dua prosiding rujukan tanah di hadapan Mahkamah Tinggi manakala perayu memfailkan permohonan di bawah A 15 k 6 Kaedah-Kaedah Mahkamah 2012 ('KKM') untuk kebenaran mencelah

('lampiran 7') dalam prosiding rujukan tanah dan untuk mengemukakan laporan penilaian dan laporan-laporan bantahan yang berkaitan. Lampiran 7 dibenarkan oleh Mahkamah Tinggi dan perayu dimasukkan sebagai pencelah/responden kedua dalam prosiding rujukan tanah, namun, perayu tidak dibenarkan untuk memfailkan laporan penilaian dan bantahannya. Kedua-dua pihak telah merayu terhadap keputusan Mahkamah Tinggi dan di akhir rayuan-rayuan, Mahkamah Rayuan memutuskan bahawa perayu tidak boleh dibenarkan untuk mencelah dan dengan demikian isu pengemukaan laporan-laporan penilaian dan bantahan akan gagal. Dalam rayuan-rayuan semasa, persoalan-persoalan undang-undang yang perlu diputuskan adalah: (a) sama ada pemfailan bantahan melalui Borang N berdasarkan s 37 Akta adalah satu-satunya cara yang tersedia bagi seorang pembayar untuk menjadi pihak dalam prosiding rujukan tanah di hadapan Mahkamah Tinggi ('soalan 1'); (b) sama ada pembayar mempunyai hak untuk menjadi pihak dalam prosiding rujukan tanah di hadapan Mahkamah Tinggi untuk melindungi kepentingan undang-undangnya di mana award pampasan yang dibuat oleh pentadbir tanah tersebut telah manjadi perkara bantahan di Mahkamah Tinggi ('soalan 2'); dan (c) sama ada pembayar setelah diberi kebenaran untuk mencelah dalam rujukan tanah boleh dinafikan hak untuk menyertai dan memfailkan laporan penilaian jika perlu di bawah Jadual Ketiga Akta ('soalan 3').

Diputuskan, menolak rayuan dengan kos:

(1) Peruntukan-peruntukan di dalam Akta menjelaskan bahawa penyerahan Borang N adalah amat penting jika sesuatu pihak ingin membantah pemberian award dalam prosiding rujukan tanah kerana ia bertujuan untuk mempercepatkan penyelesaian bantahan terhadap award tersebut. Responden telah memfailkan bantahannya melalui Borang N di bawah Akta tersebut untuk mencabar jumlah pampasan tersebut. Namun, berdasarkan fakta yang tidak dapat dipertikaikan, walaupun perayu hadir dalam perbicaraan pengambilan tanah tersebut, perayu tidak dinamakan sebagai pihak di dalam perbicaraan tersebut. Perayu juga bukan pencelah di dalam perbicaraan tersebut. Perayu juga tidak menyampaikan laporan penilaian yang berkaitan dengan tanah berjadual yang menjadi perkara asas dalam proses pengambilan tersebut (lihat perenggan 27–29).

(2) Berkenaan dengan permohonan perayu dalam lampiran 7 untuk mencelah dalam prosiding pengambilan di bawah A 15 k 6(2)(b) KKM, mahkamah bersetuju dengan responden bahawa s 45(2) Akta tidak menyokong kausa tindakan perayu. Seksyen 45(2) Akta tidak membenarkan pembesaran skop kerangka khusus di bawah Akta. Seksyen 45(2) Akta hanya memperuntukkan peranan pelengkap KKM kepada Akta jika ia tidak bertentangan dengan peruntukan Akta. Aturan 15 k 6(2)(b) KKM tidak terpakai dalam konteks kes semasa (lihat perenggan 30–31).

(3) Perayu tidak mempunyai kepentingan undang-undang dalam prosiding rujukan tanah. Perayu sebagai pembayar, jika ada pun hanyalah kepentingan kewangan. Keterangan dalam kes semasa menunjukkan bahawa perayu tidak terkilan dengan award tersebut tetapi hanya merasa bimbang bahawa hasil dari prosiding rujukan tanah di Mahkamah Tinggi akan merugikannya. Pentadbir tanah yang berhak untuk mempertahankan award dan pentadbir tanah berhak sepenuhnya untuk mengemukakan keterangan yang difikirkan perlu (lihat perenggan 37–38).

(4) Mahkamah Tinggi bertindak dengan betul apabila menafikan hak perayu untuk mengemukakan apa-apa laporan penilaian dalam prosiding rujukan tanah kerana setiap kesempatan untuk mengemukakan laporan penilaian tersebut sudah tersedia kepada perayu yang hadir semasa inkuiri. Mahkamah bersetuju dengan pandangan yang diutarakan oleh Mahkamah Rayuan bahawa kepentingan perayu jelas dijaga oleh pasukan undang-undang yang mewakili pentadbir tanah. Segala perkara yang perlu diserahkan oleh perayu seharusnya telah diambil oleh pasukan undang-undang tersebut. Proses yang sama boleh digunapakai semasa prosiding rujukan tanah di hadapan hakim Mahkamah Tinggi. Prosiding rujukan tanah di Mahkamah Tinggi tidak wajar dipanjangkan dan dilengahkan dengan proses interlokutori yang tidak perlu seperti permohonan untuk mencelah dalam lampiran 7 yang difailkan oleh perayu (lihat perenggan 39).

(5) Untuk kes ini, mahkamah mendapati bahawa tanah berjadual diambil berdasarkan s 3(1)(a) Akta. Ini terbukti daripada borang D yang dikeluarkan oleh pihak berkuasa negeri menurut s 7 Akta. Oleh itu, tiada keperluan bagi pihak yang mengambil tanah untuk mematuhi peruntukan ss 3(3), 3(4), 3(5), 3(6), 3A dan 3F Akta seperti keadaanya apabila tanah berjadual diambil di bawah s 3(1)(b) atau 3(1)(c) Akta. Dalam hal ini, mahkamah setuju dengan hujahan responden bahawa pihak yang mengambil tanah dan pembayar sebenarnya adalah pihak berkuasa negeri, walaupun terdapat perundingan dalaman antara pihak berkuasa negeri dan perayu mengenai pembayaran award (lihat perenggan 42).

(6) Di atas alasan-alasan yang dinyatakan di atas, mahkamah menjawab soalan 1 secara afirmatif. Selain pentadbir tanah, hanya orang yang telah membantah award dengan cara yang betul di bawah s 37 Akta yang berhak menjadi pihak dalam prosiding rujukan tanah dengan hak-hak yang terlibat. Mahkamah menjawab soalan 2 secara negatif. Seorang pembayar sememangnya tidak berhak. Soalan 3 pada asasnya bergantung kepada kejayaan perayu dalam rayuan-rayuan berkaitan dengan soalan 1 dan 2. Oleh itu, tidak ada keperluan bagi mahkamah untuk menjawab soalan 3. Walau bagaimanapun, persoalan laporan penilaian adalah

perkara yang pada asasnya melibatkan responden kedua (pentadbir tanah) dalam mempertahankan award (lihat perenggan 43).]

Cases referred to

Cahaya Baru Development Bhd v Lembaga Lebuhraya Malaysia [2011] 2 MLJ 729; [2010] 8 CLJ 761, FC (refd)
Collector of Land Revenue v Alagappa Chettiar; Collector of Land Revenue v Ong Thye Eng [1971] 1 MLJ 43; [1968] 1 LNS 31, PC (refd)
Damai Motor Kredit Sdn Bhd & Anor v Kementerian Kerja Raya Malaysia [2015] 1 CLJ 44, CA (distd)
Ng Kam Loon & Ors v Director Of Public Works Department, Johore & Anor [1990] 2 MLJ 229; [1990] 1 LNS 23, HC (refd)
Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v Inch Kenneth Kajang Rubber Ltd & Anor [2011] 4 MLJ 403; [2011] 1 CLJ 95, CA (folld)
Sistem Penyuraian Trafik KL Barat Sdn Bhd v Kenny Heights Development Sdn Bhd & Anor [2009] 3 MLJ 809; [2009] 4 CLJ 57, CA (refd)
Tohtonku Sdn Bhd v Superace (M) Sdn Bhd [1992] 2 MLJ 63; [1992] 2 CLJ 1153; [1992] 1 CLJ Rep 344, SC (refd)

Legislation referred to

Land Acquisition Act 1960 ss 2, 3, 3(1), 3(1)(a), (1)(b), (1)(c), (2), (3), (4), (5), (6), 3A, 3B, 3C, 3D, 3E, 3F, 7, 10, 11, 12, 37, 37(3), 38, 43, 44, 44(1), (2), 45, 45(2), 49, 55(1)(b), Third Schedule, Forms D, E, N
Rules of Court 2012 O 15 r 6, 6(2), (2)(b)
Rules of the High Court 1980 O 15 r 6(2)(b)

Cyrus Das (Steven Thiru, David Mathew, Mehala Marimuthoo and David Ng Yew Kiat with him) (Shook Lin & Bok) for the appellant.
Malik Imtiaz (Lye Wing Voi, Yap Hsu-Lyn and Chan Wei June with him) (WV Lye & Partners) for the first respondent.
Etty Eliany Tesno (Selangor State Legal Advisor) for the second respondent.

Zulkefli PCA:

BACKGROUND FACTS

[1] These are four appeals filed by the appellant, Tenaga Nasional Bhd ('TNB') before this court originating from two land reference proceedings in the High Court which were heard together. The respondent in these four appeals is Unggul Tangkas Sdn Bhd ('Unggul Tangkas'). Unggul Tangkas was the registered owner of two pieces of land ('scheduled land') which were acquired for TNB pursuant to s 3(1)(a) of the Land Acquisition Act 1960 ('the Act'). Unggul Tangkas was awarded RM12,593,196 ('award') as full

compensation for its interest in the scheduled land, which was payable by TNB.

[2] Dissatisfied with the award, Unggul Tangkas filed an objection in Form N to the land administrator and initiated two land reference proceedings before the High Court.

[3] TNB filed applications under O 15 r 6 of the Rules of Court 2012 ('the ROC 2012') for leave to intervene ('encl 7') in the land reference proceedings and to file the valuer's report and the relevant rebuttal reports.

[4] Unggul Tangkas contended that TNB failed to comply with the procedure for objection to the award as provided for under ss 37(3) and 38 of the Act and the applications to intervene were an abuse of the court process.

IN THE HIGH COURT

[5] The High Court allowed encl 7 and TNB was added as the intervener/second respondent in the land reference proceedings. Nonetheless, TNB was not allowed to file its valuation and rebuttal reports. The High Court, inter alia, stated as follows:

(a) as a paymaster, the proposed intervener has both legal and commercial interests in the decision of this court on the land reference; and

(b) the proposed intervener has not filed any valuation report at the enquiry before the land administrator, thus the court agrees with the submissions of the landowner's counsel that it will be unfair for the proposed intervener to now be allowed to file its valuation report. Furthermore, it is pertinent to note that the land administrator's award was made based on the valuation reports before the land administrator.

[6] Aggrieved by the decision, Unggul Tangkas filed two appeals to the Court of Appeal against the order allowing TNB to intervene, whereas TNB lodged two appeals against the decision of the High Court which refused to allow TNB to adduce the valuation and the rebuttal reports.

IN THE COURT OF APPEAL

[7] The Court of Appeal held that TNB should not be allowed to intervene and thus the issue of adducing the valuation and the rebuttal reports shall fail. The Court of Appeal in its judgment, inter alia, observed as follows:

> Section 45 of the LA Act 1960 says inter alia, it does not allow for a *carte blanche* importation of the Rules of Court 2012 *in toto*. It only allows for the Rules of Court 2012 to be applied in appropriate circumstances. It does not make the application

of all provisions in the Rules of Court 2012 to be applicable to proceedings emanating from the LA Act 1960. Our construction of s 45 of the LA Act 1960 is that the Rules of Court 2012 is applicable as long as they do not run contrary to the provisions, in the context of the provisions of the LA Act 1960 itself. At the highest, its application to the LA Act 1960, if at all appropriate, it is complementary.

... TNB was not a party that was entirely alien to the proceedings before the LA. It was present and its interest was clearly taken care of by the legal team of the land acquirer. Anything that needed to be said for TNB must have been taken up by the acquiring party. If TNB wanted a lower value be attached to the land, it must have indicated the same to the officer of the State Legal Adviser. In fact, the same process could be replicated during the land reference before the High Court Judge.

... no intervention means the issue of putting in the valuation report as rebuttal report by TNB would not arise at all.

QUESTIONS OF LAW

[8] The Federal Court allowed the motion for leave to appeal by TNB on the following questions of law:

(a) whether the filing of an objection vide Form N pursuant to s 37 of the Land Acquisition Act 1960 is the only mode available for a paymaster to be a party in a land reference proceeding before the High Court?

(b) whether the paymaster has a right to be made a party in a land reference proceeding before the High Court to safeguard its legal interest where the award of compensation made by the land administrator is being subject to challenge at the High Court? and

(c) whether the paymaster upon being given leave to intervene in the land reference can be denied the right to participate and file a valuer's report if necessary under the Third Schedule to the Land Acquisition Act 1960?

SUBMISSIONS OF TNB (THE APPELLANT)

[9] Learned counsel for TNB amongst others submitted as follows:

It is the contention of TNB that the provisions of the Act safeguard the interests of all persons who may be affected by the award of compensation made by the Land Administrator at the inquiry stage and the outcome of any objection to the said award in the High Court. Section 11 of the Act requires the Land Administrator to notify any person whom he knows or has reason to believe to be interested in the land being acquired of the date of the inquiry for the hearing of compensation claims.

[10] In the present case, a representative of TNB attended the compensation inquiry carried out pursuant to s 12 of the Act. Learned counsel for TNB

submitted that TNB was rightly notified about the inquiry as the land administrator had acknowledged that TNB is a 'person interested' within the meaning of the Act. Section 43 of the Act requires a notice to be served on the person or corporation on whose behalf the land was acquired directing his/its appearance before the High Court at the hearing of the objection in relation to the acquisition.

[11] Learned counsel for TNB referred to us the provision of s 44(1) of the Act which provides that the scope of the High Court's inquiry in land reference proceedings is restricted to a consideration of the interests of persons affected by an objection made, while s 44(2) of the Act requires the High Court to consider the interests of all persons interested, including those who have themselves not made an objection. It was submitted that this does not preclude the High Court from hearing and considering the interests of parties who have consented to the award without protest, as TNB did in this case (see the case of*Ng Kam Loon & Ors v Director Of Public Works Department, Johore & Anor* [1990] 2 MLJ 229; [1990] 1 LNS 23).

[12] It is the contention of TNB that an application to intervene pursuant to O 15 r 6(2)(b) of the ROC 2012 is the procedural step required for the person or corporation to appear and be heard as a party to the land reference proceedings as permitted by s 55(1)(b) of the Act. In this connection, s 49 of the Act gives 'any person interested' and 'any person or corporation on whose behalf the proceedings were instituted pursuant to s 3' the right to appeal from a decision of the High Court. Thus, without being added as an intervener/party, 'any person interested' and 'any person or corporation on whose behalf the proceedings were instituted pursuant to s 3' will not have the avenue to appeal in a land reference proceedings.

[13] It is the contention of TNB that the Court of Appeal failed to take into account the provisions in ss 43, 44 and 55 of the Act which recognise the right of parties such as the paymaster who is interested in the acquired land and may be affected by the outcome of any objection to the land adminstrator's award in the High Court to be heard as a party in the land reference proceedings in order to safeguard its interest.

[14] It was submitted for TNB that it would be quite meaningless for TNB, as the paymaster, to have been allowed to participate at the inquiry stage before the land adminstrator but not before the High Court at the land reference proceedings where the final decision on the quantum of compensation is to be made.

[15] As regards the application of the ROC 2012 it was submitted for TNB that our courts have recognised that an intervener's application pursuant to

O 15 r 6(2) of the ROC 2012 can be made in land reference proceedings (see the cases of *Sistem Penyuraian Trafik KL Barat Sdn Bhd v Kenny Heights Development Sdn Bhd & Anor* [2009] 3 MLJ 809; [2009] 4 CLJ 57 and *Damai Motor Kredit Sdn Bhd & Anor v Kementerian Kerja Raya Malaysia* [2015] 1 CLJ 44).

SUBMISSIONS OF UNGGUL TANGKAS (THE RESPONDENT)

[16] Learned counsel for Unggul Tangkas amongst others submitted as follows:

> TNB had elected not to participate in the enquiry before the Land Administrator. Its representatives were present but as passive observers. It had not been issued with a Form E.

[17] It was also submitted for Unggul Tangkas that TNB had not lodged Form N in objection to the award. Therefore, it did not dispute the award.

[18] Learned counsel for Unggul Tangkas contended that TNB's basis for filing encl 7 is that it was merely concerned that the amount of the award might be increased in favour of Unggul Tangkas, an outcome it did not support.

[19] Learned counsel for Unggul Tangkas impressed upon us that the Act puts in place a legal framework directed at the expeditious determination of the quantum of compensation payable by reason of the acquisition of land by a state authority.

[20] It was submitted for Unggul Tangkas that under s 3(1) of the Act, the acquisition of land by the state authority can be made under any one of the three purposes contemplated under the said subsection. Where the land is to be acquired for purposes under s 3(1)(b) and/or (1)(c), (2) and (3) of the Act contemplate an application being made to the land administrator in the prescribed format and the need to comply with the requirements as spelt out under s 3(4), (5), (6) as well as ss 3A–3F of the Act.

[21] For the present case, the land was acquired under s 3(1)(a) of the Act. No such application as envisaged by s 3(2) and (3) of the Act was needed as the acquisition was driven by the state authority itself. This was evident from Form D issued by the state authority pursuant to s 7 of the Act. In the circumstances of this case, it is the contention of Unggul Tangkas that the conclusion that can be drawn is that the acquiring party and the paymaster is the state authority.

[22] Learned counsel for Unggul Tangkas submitted that given the streamlined procedure set out under the Third Schedule of the Act, unless the recipient is the applicant or the respondent, other persons are not to be treated as parties. They are heard to the extent necessary as determined by the High Court.

[23] It was also submitted for Unggul Tangkas of the importance of the issuance of Form E under the Act. The land adminstrator commences acquisition proceedings by giving public notice in Form E pursuant to s 10 of the Act read with s 11 of the Act. Form E is served upon the occupier of the land, the registered proprietor of such land, and where he is not the occupier thereof, any person having a registered interest in such land and/ or any person whom the land adminstrator knows or has reason to believe to be interested therein.

[24] It is the contention of Unggul Tangkas that the land adminstrator has a wide discretion to issue a Form E, and this could include persons who, to the knowledge of the land adminstrator, have a financial interest in the acquisition exercise (see the case of*Cahaya Baru Development Bhd v Lembaga Lebuhraya Malaysia* [2011] 2 MLJ 729; [2010] 8 CLJ 761).

[25] In the case at hand, a Form E was not issued to TNB. Moreover, TNB did not lodge a Form N, nor did it seek to do so. It is Unggul Tangkas' case that TNB cannot reject to the award as only an interested person who has made a claim to the land adminstrator in due time and who has not accepted the land adminstrator's award may make an objection.

[26] As regards the application in encl 7 for TNB to intervene as a party to the land reference proceedings under O 15 r 6(2)(b) of the ROC 2012, it is the submission of Unggul Tangkas that it has no application in the context of the present case. Section 45(2) of the Act is of no assistance. It only provides that the ROC 2012 is to play a role where there is any inconsistency with anything contained in the Act. There is no inconsistency that can be shown in this case.

DECISION OF THIS COURT

[27] At the outset, we have to state here that the High Court proceedings in the present case were concerned with the appeal by the owner of the scheduled land, Unggul Tangkas against the amount of the award that was given to it as compensation for the scheduled land that was acquired by the state authority for the benefit of TNB. Enclosure 7 was an application by TNB to be granted leave to intervene in the High Court proceedings under O 15 r 6(2)(b) of the ROC 2012. The Court of Appeal was right in stating that it was Unggul Tangkas being the owner who was the party aggrieved by the award that was

handed down as compensation for the acquisition. Unggul Tangkas had duly filed its objection in Form N under the Act in order to challenge the amount of the said compensation.

[28] We noted that the undisputed facts in the present case showed that during the land acquisition hearing before the land adminstrator, the landowner, Unggul Tangkas, was present. TNB was also present. It was also not disputed that during the course of the acquisition hearing, TNB was not named as a party thereto. Neither was it present there as an intervener. Neither did it present any valuation report pertaining to the scheduled land that was the subject matter of the acquisition exercise.

[29] We are of the view the provisions of the Act made it clear that the lodging of Form N is essential if a party seeks to object to an award in land reference proceedings as it is aimed at an expeditious resolution of the objection to the award.

[30] As regards TNB's application in encl 7 to intervene in the acquisition proceedings under O 15 r 6(2)(b) of the ROC 2012, we agree with the submission of learned counsel for Unggul Tangkas that s 45(2) of the Act does not lend assistance to TNB's cause of action. Section 45(2) of the Act does not allow for an enlargement of the scope of the specific framework under the Act. Section 45(2) of the Act provides as follows:

> Save in so far as they may be inconsistent with anything contained in this Act the law for the time being in force relating to civil procedure shall apply to all proceedings before the court under this Act.

[31] We are of the view that s 45(2) of the Act only provides for the complementary role of ROC 2012 to the Act if it does not run contrary to the provisions of the Act. Order 15 r 6(2)(b) of the ROC 2012 in the context of the present case does not have any application. On this point, we cite with approval the observation made by His Lordship KN Segara JCA in the case of*Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v Inch Kenneth Kajang Rubber Ltd & Anor* [2011] 4 MLJ 403; [2011] 1 CLJ 95 as follows:

> In the overall scheme and context of the Land Acquisition Act, any application by the appellant under O 15 r 6(2)(b) RHC 1980 to be made a party, is inappropriate. It would amount to an abuse of the process of the court and an attempt to circumvent the clear and unambiguous provisions of the LAA 1960 as regards to the manner and circumstances in which 'persons interested' under the LAA 1960 are to participate in proceedings either before the land adminstrator at an enquiry or, in court, upon a reference by the land adminstrator upon any objection to an award. Filling of Form N is the most appropriate and the only mode available under the LAA 1960 to any person interested under the LAA 1960 to become a party in a

Land Reference at the High Court relating to an objection to the amount of compensation.

[32] Learned counsel for TNB referred to us the Court of Appeal case of *Sistem Penyuraian Trafik KL Barat Sdn Bhd v Kenny Heights Development Sdn Bhd & Anor* [2009] 3 MLJ 809; [2009] 4 CLJ 57 to support his contention that our courts have recognised an intervener's application pursuant to O 15 r 6(2)(b) of the ROC 2012 can be made in land reference proceedings. This case of *Sistem Penyuraian Trafik KL Barat Sdn Bhd* was decided earlier than the Court of Appeal case of *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd.* The case of *Sistem Penyuraian Trafik KL Barat Sdn Bhd* was a split decision wherein the majority was of the view that O 15 r 6(2)(b) of the RHC 1980 was applicable in consideration whether SPRINT as an 'interested party' could be rightly added in the land reference proceedings. It would appear that there was a conflict between these two decisions of the Court of Appeal on the issue of intervention by a party in land reference proceedings before the panel of the Court of Appeal in the present case.

[33] On a careful examination of the above two conflicting decisions of the Court of Appeal cases, we are of the view that the decision in the case of *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd* which was followed by the Court of Appeal in the present case was correctly decided on this issue. The court in *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd* had considered the totality of the circumstances of the case in the light of the scheme of the Act and the kind of special regime it has created, such that O 15 r 6(2)(b) of ROC 2012 is not applicable for the purpose of making a party either a co-respondent or an intervener. We fully endorse the views expressed and the decision arrived at in the case of *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd.*

[34] As regards the case of *Damai Motor Kredit Sdn Bhd & Anor v Kementerian Kerja Raya Malaysia* [2015] 1 CLJ 44 relied on by TNB on the application of O 15 r 6(2)(b) of the ROC 2012 to acquisition proceedings, we are of the view the factual matrix of the said case is distinguishable from the present case. In the *Damai Motor Kredit* case, the appellant/landowner whose land had been acquired under the Act was not informed and named as a party in the originating summons ('OS') filed by the respondent (Kementerian Kerja Raya Malaysia) in the OS application for extension of time to file Form N to the land adminstrator who had awarded a sum of award which was subsequently objected to by the respondent. The appellants did not know about the OS and were never served with the application. They only became aware of the OS after the application for an extension of time to file Form N with the land adminstrator was granted. They subsequently filed in the High Court a summons in chambers ('the SIC') for leave to intervene in the action by the respondent and to set aside the court order granting the respondent the OS.

[35] The High Court dismissed the SIC which led to the appeal by the appellants to the Court of Appeal. The Court of Appeal allowed the appellants' appeal and, inter alia, held that clearly the appellants in the *Damai Motor Kredit* case were persons interested who were within the contemplation of s 2 of the Act. The position of the appellants/landowner in the *Damai Motor Kredit* case was clearly made out, where their interests were at stake as landowners. The question of them applying to be made interveners did not arise at all. They were the original parties in the proceedings before the land adminstrator. As such, they ought to be named in the OS proceedings by the respondent.

[36] We are of the view the Court of Appeal in the *Damai Motor Kredit* had rightly ruled that the learned High Court judge was in error when he denied the appellants' application to be made interveners. With respect, however, the same cannot be said of TNB in our instant appeal. As was alluded to in the preceding paragraphs of this judgment, the factual matrix of the present case would not warrant a similar treatment for TNB.

[37] It is our judgment that TNB had no legal interest in the land reference proceedings. TNB being the paymaster, it had at the highest only a pecuniary interest (see the case of *Tohtonku Sdn Bhd v Superace (M) Sdn Bhd* [1992] 2 MLJ 63; [1992] 2 CLJ 1153; [1992] 1 CLJ Rep 344). The evidence in the present case showed that TNB was not aggrieved by the award but was merely apprehensive that the outcome of the land reference proceedings in the High Court may adversely affect its pocket. At any rate, TNB's rights on whose behalf acquisition proceedings were instituted (see s 43 of the Act) and whose interests must be considered by the court whether they have objected or not (see s 44(2) of the Act) without the need for intervention.

[38] We are of the view that it was for the land adminstrator to defend the award and, as declared by the Privy Council in the case of *Collector of Land Revenue v Alagappa Chettiar; Collector of Land Revenue v Ong Thye Eng* [1971] 1 MLJ 43; [1968] 1 LNS 31, the land adminstrator was fully entitled to lead such evidence as he considered necessary to do so.

[39] In the present case, we take the view that the High Court was correct to deny TNB's right to tender any valuer's report in the land reference proceedings as every opportunity to tender the same was available to TNB who was present during the enquiry. We agree with the views expressed by the Court of Appeal in the present case that the interest of TNB was clearly taken care by the legal team representing the land adminstrator. Anything that needed to be submitted for TNB must have been taken up by the legal team. We would add here that the same process could be replicated during the land reference proceedings before the High Court Judge. Land reference proceedings should

not be protracted and delayed in the High Court by unnecessary interlocutory proceeding such as an application to intervene in encl 7 filed by TNB.

[40] We are also of the view that the purposes of the acquisition of the scheduled land by the state authority as spelt out under s 3(1) of the Act need to be considered in determining whether TNB could be allowed to intervene and become a party at the stage of the land reference proceedings in the High Court. Section 3(1) of the Act provides as follows:

> 3(1) The State Authority may acquire any land which is needed:
>
> (a) for any public purpose;
>
> (b) by any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public; or
>
> (c) for the purpose of mining or for residential, agricultural, commercial, industrial or recreational purposes or any combination of such purposes.

[41] It should be noted that where the land is to be acquired for purposes under s 3(1)(b) and/or (1)(c) of the Act, s 3(2) and (3) of the Act require an application being made to the land adminstrator in the prescribed format. Under s 3(4) of the Act, this application is then transmitted to the relevant authority for determination. The remaining s 3(5) and (6) of the Act as well as ss 3A–3F of the Act provide further for the manner in which such applications are to be dealt with. It is our considered view that if the purpose of the acquisition of the land had been under ss 3(1)(b) and/or (1)(c) of the Act, then it can be said the acquiring party and the paymaster is TNB.

[42] For the present case, we found that the scheduled land was acquired under s 3(1)(a) of the Act. This is evident from Form D issued by the state authority pursuant to s 7 of the Act. There was therefore no requirement for the acquiring party to comply with the provisions of ss 3(3), 3(4), 3(5), 3(6), 3A and 3F of the Act unlike if the scheduled land were to be acquired under s 3(1)(b) or 3(1)(c) of the Act. In this regard, we agree with the contention of Unggul Tangkas that the acquiring party and the paymaster is in fact the state authority. This is notwithstanding any internal arrangement between the state authority and TNB concerning the payment of the award.

[43] For the reasons above-stated, we would answer question 1 posed in these appeals in the affirmative. Other than the land adminstrator, only a person who has properly objected to an award under s 37 of the Act is entitled to be a party to the land reference proceedings with all the rights that entails. Question 2 should be answered in the negative. A paymaster is not so entitled as a matter of course. Question 3 ultimately hinges on TNB succeeding in these appeals in respect of questions 1 and 2. Therefore, there is no necessity for us to

answer question 3. In any event, the question of valuer's report is a matter that ultimately concerns the second respondent (the land adminstrator) in defending the award.

[44] The appeals by TNB are therefore dismissed with costs.

Appeals dismissed with costs.

Reported by Dzulqarnain Ab Fatar